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**EXHIBIT E**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

POM WONDERFUL LLC, a Delaware  
limited liability company,

Plaintiff,

v.

ORGANIC JUICE USA, INC., a New York  
corporation; and DOES 1-10, inclusive,

Defendants.

-----  
ORGANIC JUICE USA, INC., a New York  
corporation,

Counter-Plaintiff,

v.

POM WONDERFUL LLC, a Delaware  
limited liability company,

Counter-Defendant.

**Case No. 1-09-cv-04916-CM**

Assigned to Hon. Colleen McMahon

**EXPERT REPORT OF SHANKAR BHATTACHARYYA**

April 1, 2010

**I) Background and Qualifications**

I currently serve as the Corporate Science Officer at Certified Laboratories, Inc., a full service independent laboratory in Plainview, NY. Prior to my current position I served for 12 years as the manager of the lab's Instrumentation Department. Certified Laboratories provides an extensive range of testing services to the agriculture, dairy, juice, meat, spice, seafood, refrigerated foods and nutraceutical industries. My educational background includes an undergraduate education in India with a major in Chemistry and a minor in Physics (Bombay University and the Indian Institute of Technology, Bombay), and a Master's degree in Chemistry from Columbia University in New York.

My professional background consists of more than 28 years experience as an analytical chemist in the field of food and beverage analysis. In my prior capacity as the Manager of the Instrumentation Department, I oversaw all analytical work consisting of atomic absorption (for metals) and chromatographic techniques. This work included mixed-mode techniques such as chromatography coupled to mass spectrometric techniques involving leading edge methods for trace analytes. I also managed analysis of foods for nutrient content including macro and microanalytes, adulteration and authenticity, covering a wide range of analytes across the food analysis domain.

I have wide-ranging expertise in the techniques and methods used in the analysis of foods and beverages, including macro, micro and trace level analysis. My specific expertise includes analysis of foods for contaminants and adulterants, quality indicators or criteria, authenticity, nutritional analysis and related areas. I have previously conducted testing using physical and chemical analysis to determine the purity of a variety of fruit juices including, but not limited to, apples, oranges, strawberries, raspberries, and pomegranates. A copy of my resume is attached as Exhibit "1". Certified Laboratories' fee for preparation of this report is \$1000 and our fee for testimony or depositions is \$3000 per day or part thereof. Our fees are not contingent on our opinions or on the outcome of this litigation.

## **II) Summary of opinion**

We analyzed two samples of pomegranate juice at the request of Dewey & LeBoeuf LLP, acting on behalf of its client Organic Juice, USA, which imports Elite Naturel 100% Pure Pomegranate Juice. Specifically, we were asked to purchase two samples of Elite Naturel pomegranate juice (one organic and one conventional) from a retail store and test the juices to determine whether they were 100% pure pomegranate juice as indicated on the label. Identification of the purchased bottles is outlined below.

Based on the lab's analytical work, my opinion is that both samples are 100% pure pomegranate juice.

## **III) Analysis**

On or about July 1, 2009, Dewey & LeBoeuf engaged Certified Laboratories, Inc. to analyze two samples of pomegranate juice. At their instruction we purchased two bottles of Elite Naturel's 100% Pure Pomegranate Juice (one organic and one conventional) at a Whole Foods store in Jericho, NY. Sample identification is as follows:

Lab # AE02123: ELITE NATUREL 100% PURE POMEGRANATE JUICE/ EXP  
09.03.10, P-NO:08451, 14:25

And

Lab # AE02124: ELITE NATUREL 100% PURE POMEGRANATE JUICE/ORGANIC,  
EXP 06.04.10, P-NO:88321, 13:08

These samples were analyzed at Certified Laboratories to determine whether they contained pure 100% pomegranate juice. To make that determination, Certified Laboratories analyzed the samples for the following parameters:

Carbohydrate profile, Preservatives, Anthocyanins, D-Malic acid, Potassium, Titratable acidity, Brix (at 20 C), D-isocitric acid, Formol number, Proline and Artificial colors.

Additionally, the samples were sent to Krueger Food Labs for Carbon Stable Isotope Ratio Analysis (Carbon SIRA), a technique for detection of sugars from cane or corn. The results of this test are attached as Exhibit "3". Krueger Food Labs concluded that no cane or corn sugar was detected in the samples.

Based on the results obtained from these analyses my conclusion is that the samples are both authentic, 100% pure pomegranate juice, with no indications of adulteration or fraud.

Detailed reports, showing the results of the individual tests, are attached as Exhibit "2".

#### **IV) Conclusion**

Based on our results, it is my opinion that the above-referenced samples are composed of 100% pure pomegranate juice.

Signed:   
Shankar Bhattacharyya, Science Officer

Date: 4/1/2010

# **Exhibit 1**

**Shankar Bhattacharyya**  
**Certified Laboratories, Inc.**  
200 Express St, Plainview, NY 11803  
(516)576-1400  
sbhattacharyya@800certlab.com

### **Professional Profile**

Analytical Chemist with broad expertise in the analysis of foods, beverages and related products; Wide-ranging expertise in techniques and technologies used in analysis of food; Specific expertise in analysis of foods for contaminants and adulterants in the context of imported food products detained by the Food and Drug Administration, analysis for trace analytes, food safety issues and emerging analytical techniques and technologies.

### **Professional Experience**

<b>Certified Laboratories, Inc., Plainview, NY</b>	<b>1996-Current</b>
<b>Manager (Instrumentation)</b>	<b>1996-2009</b>

Managed analytical work in the Instrumentation Department, consisting of chromatographic techniques and atomic absorption, including the incorporation of mass spectrometric techniques such as gas chromatography with mass spectrometric detection (GC/MS) and liquid chromatography with tandem mass spectrometric detection (LC/MS-MS), which provided state of the art capabilities. Additionally, these techniques were brought to bear on analyses for objectives related to food safety in the area of international trade.

Managed the introduction of new methods and high volume analysis for the corresponding analytes chemotherapeutics such as Nitrofurans and their metabolites; Fluoroquinolones; Malachite Green, Gentian Violet and their Leuco compounds; and Melamine and its analogs Cyanuric Acid, Ammeline and Ammelide.

Managed analysis of foods for nutrient content including macro and microanalytes, adulteration and authenticity, covering a wide range of analytes across the food analysis domain.

<b>Corporate Science Officer</b>	<b>2009-Current</b>
----------------------------------	---------------------

Responsibilities include:

- a) Provide scientific expertise to meet corporate planning requirements

**Shankar Bhattacharyya**  
**Certified Laboratories, Inc.**  
200 Express St, Plainview, NY 11803  
(516)576-1400  
sbhattacharyya@800certlab.com

- b) Provide technical consulting to all departments in all areas of analytical science of interest in the laboratory, including design of experiments, establishment of quality control procedures, statistics of testing, and statistical quality control of laboratory procedures.
- c) Facilitate adoption of new methods and new technologies in the departments.
- d) Rapidly develop personal technical abilities or resources as needed to meet organizational needs.
- e) Enable departments to develop their own resources to be self-sufficient at the technical level in the face of new challenges.
- f) Review all SOPs for their technical content.
- g) Participate in the development of all regulatory packages for submission to FDA.
- h) Participate in relevant method development activities in the analytical community.

**Winston Laboratories, Inc., Ridgefield Park, NJ** **1981-1996**  
**Analytical Chemist/Manager (Chemistry)**

Performed and managed analysis of foods and beverages for nutritional labeling; quality control; ingredient verification/identification; and detection of contaminants, using gas chromatography, liquid chromatography, atomic absorption and wet chemistry, covering a wide range of analytes and sample types.

**Education**

M.A., Chemistry, Columbia University

Primary training was in synthetic organic chemistry, which provided a thorough background in the chemistry of small organic molecules, an understanding I have found extremely useful in the analytical chemistry of food.

**Professional Affiliation**

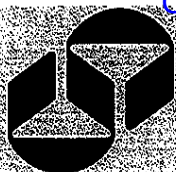
Member, AOAC International



**Prior Expert Testimony Summary**  
Shankar Bhattacharyya

1. While serving at an earlier position at Winston Laboratories, Ridgefield Park, NJ (no longer in business), I performed testing on behalf of the Public Defenders office. Specifically, I was engaged to perform analytical work involving the presence of cocaine in evidence obtained during an arrest. I provided testimony concerning my findings. This was approximately 20 years ago. (I cannot recall the specific party names and dates).
2. I was engaged to conduct certain testing involving the amount of juice in a particular sorbet product. I testified in Queens County Supreme Court concerning my findings. This was approximately 6 or 7 years ago. (I cannot recall the specific party names or dates).
3. I was engaged, along with various other labs, to conduct certain testing concerning the Guaiacol content of vanilla beans. I provided testimony at an arbitration hearing concerning my findings. (I cannot recall the specific party names or dates).

# **Exhibit 2**


**Certified Laboratories, Inc.**
**Full Service Laboratory • Established 1926**
**PRINT DATE : 08/07/2009**
**REPORT DATE : 08/07/2009**

DEWEY & LEBOEUF  
1301 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019  
ATT: ALEXANDER KAYNE

**LAB # : AE02123**
**DATE RECEIVED 07/22/2009**

**PRODUCT** ELITE NATUREL 100% PURE POMEGRANTE JUICE/NATURAL  
**PACKAGE** IN SEALED GLASS BOTTLE, EXP 09.03.10, P-NO:08451, 14/25

<u>ANALYTE</u>	<u>RESULT</u>	<u>UNITS</u>	<u>METHOD REFERENCE</u>
<b><u>CARBOHYDRATE JUICE PROFILE</u></b>			
GLUCOSE	5.9 %		AOAC 996.04
FRUCTOSE	8.9 %		AOAC 996.04
SUCROSE	0.0 %		AOAC 996.04
TOTAL SUGARS	0.0 %		AOAC 996.04
SORBITOL	0.0 %		AOAC 996.04
GLUCOSE/FRUCTOSE RATIO	0.7 %		AOAC 996.04
<b><u>PRESERVATIVES PROFILE</u></b>			
SODIUM BENZOATE	ND <0.002 %		JAOAC V 75, p 892 (1987) (modified)
POTASSIUM SORBATE	ND <0.001 %		JAOAC V 75, p 892 (1987) (modified)
ANTHOCYANINS	NORMAL		
D-MALIC ACID	NOT DETECTED %		
POTASSIUM	175 mg/100g		AOAC 985.35
TITRATABLE ACIDITY	0.90 %		AOAC 942.15
BRIX @ 20° C	14.5 deg.		AOAC LATEST EDITION
D-ISOCITRIC ACID	4 mg/100g		
FORMOL NUMBER	15.7 meq/100g		
PROLINE	165 mg/kg		IFFJP METHOD 49
	2		
	3		
	1		
CARBON SIRA	-24.7 PPT		
AUTHENTICITY	% OF CARBON FROM CANE OR CORN = NONE BASED ON THESE RESULTS WE BELIEVE THIS PRODUCT TO BE A PURE POMEGRANATE JUICE.		

**ARTIFICIAL COLOR**

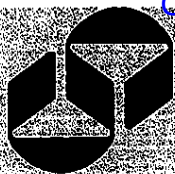
RESULTS ARE EXPRESSED ON A 16 BRIX BASIS  
NONE DETECTED

**AOAC 988.13**
**END OF REPORT**

*Martin Mitchell*  
Managing Director

**Page 1 of 1**

This report may not be reproduced for advertising or trade purposes over our signature or in connection with any other business without our prior written approval. Our findings and reports apply only to the sample submitted and do not constitute a guarantee of the results or quality of the sample.

**Certified Laboratories, Inc.**

Full Service Laboratory • Established 1926

PRINT DATE :08/07/2009

REPORT DATE :08/07/2009

DEWEY & LEBOEUF  
1301 AVENUE OF THE AMERICAS  
NEW YORK, NY 10019  
ATT: ALEXANDER KAYNE

LAB #: AE02124

DATE RECEIVED 07/22/2009

PRODUCT ELITE NATUREL 100% PURE POMEGRANATE JUICE/ORGANIC  
PACKAGE IN SEALED GLASS BOTTLE, EXP 06.04.10, P-NO:88321, 13:08

<u>ANALYTE</u>	<u>RESULT</u>	<u>UNITS</u>	<u>METHOD REFERENCE</u>
<u>CARBOHYDRATE JUICE PROFILE</u>			
GLUCOSE	7.0 %		AOAC 996.04
FRUCTOSE	9.6 %		AOAC 996.04
SUCROSE	0.0 %		AOAC 996.04
TOTAL SUGARS	0.0 %		AOAC 996.04
SORBITOL	0.0 %		AOAC 996.04
GLUCOSE/FRUCTOSE RATIO	0.7 %		AOAC 996.04
<u>PRESERVATIVES PROFILE</u>			
SODIUM BENZOATE	<0.002 %		JAOAC V 75, p 892 (1987) (modified)
POTASSIUM SORBATE	<0.001 %		JAOAC V 75, p 892 (1987) (modified)
ANTHOCYANINS	NORMAL		
D-MALIC ACID	NOT DETECTED	%	
POTASSIUM	165	mg/100g	AOAC 985.35
TITRATABLE ACIDITY	0.87	%	AOAC 942.15
BRIX @ 20° C	14.5	deg.	AOAC LATEST EDITION
D-ISOCITRIC ACID	3	mg/100g	
FORMOL NUMBER	16.0	meq/100g	
PROLINE	107	mg/kg	IFFJP METHOD 49
	5		
	6		
	4		
CARBON SIRA	-24.6 PPT		
AUTHENTICITY	% OF CARBON FROM CANE OR CORN = NONE BASED ON THESE RESULTS WE BELIEVE THIS PRODUCT TO BE A PURE POMEGRANATE JUICE.		

ARTIFICIAL COLOR

RESULTS ARE EXPRESSED ON A 18 BRIX BASIS  
NONE DETECTED

AOAC 988.13

END OF REPORT

*Martin Mitchell*  
Managing Director

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This report may not be reproduced for advertising or trade purposes over our signature or in violation of our terms and conditions of sale. The results and conclusions are only valid for the product and the amount of product analyzed. The results are representative of the lot as a whole.

# **Exhibit 3**



*Analytical Services  
for the Food Industry*  
45 Manning Road, Billerica, MA 01821-3934  
www.kfl.com • dkrueger@kfl.com  
978-667-6900 • f 978-667-6999

**CERTIFICATE OF ANALYSIS***Submitted by:*

Elizabeth Cusack  
Certified Laboratories, Inc.  
200 Express Street  
Plainview, NY 11803

*Date Reported: 7/28/09  
Date Received: 7/23/09*

*Reference:**PO #: C0722-1*

<i>Description</i>	<i>Your Sample Number</i>	<i>Our Lab Number</i>
Pomegranate Juice	AE02123	85525

**CARBON SIRA:**

$\delta^{13}\text{C}$  (‰) -24.7  
% of Carbon from Cane or Corn\* none

\*If 1 - 20% cane or corn is indicated, interpretation should be confirmed by further testing.

By:

18176 22208 228 85525 (7/28/09)

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07/29/09 WED 08:40 ITX/RX NO 8948J



Analytical Services  
for the Food Industry

45 Manning Road, Billerica, MA 01821-3934  
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978-667-6900 • f 978-667-6999

### CERTIFICATE OF ANALYSIS

**Submitted by:**

Elizabeth Cusack  
Certified Laboratories, Inc.  
200 Express Street  
Plainview, NY 11803

**Date Reported:** 7/28/09

**Date Received:** 7/23/09

**Reference:**

**PO #:** C0722-1

Description	Your Sample Number	Our Lab Number
Pomegranate Juice	AE02124	85526

**CARBON SIRA:**

$\delta^{13}\text{C}$ (‰)	-24.6
% of Carbon from Cane or Corn*	none

\*If 1 - 20% cane or corn is indicated, interpretation should be confirmed by further testing.

By: 

18176 22208 228 85526 (7/28/09)

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07/29/09 WED 08:40 [TX/RX NO 8948]